HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 349 of 2002

Date of Decision: 21.3.2007

Tara Chand Gupta ……. Petitioner

Versus

Union of India and Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? **No**

For the petitioner	:	Mr. H. K. Paul, Advocate.
For the respondents	:	Mr. Sandeep Sharma, Asstt. Solicitor General of India.

Sanjay Karol, J. (Oral)

The petitioner has filed the present writ petiton seeking a direction that the petitioner be considered for promotion to the post of Head Constable (Mechanic) from the initial date of appointment or from any subsequent suitable date keeping in view the petiioner's length of service and experience, with all consequential benefits. He has further assailed the decision of the respondents in terms of its memorandum dated 16th July, 2001, whereby the petitioner's representation has been rejected.

The petitioner was working as Mechanic-cum-Fitter in the Workshop of H.P. Public Works Department under the Assistant Engineer, Mechanical Sub Division, Tara Devi, Shimla, w.e.f. 25th October, 1972.

Whether reporters of Local Papers may be allowed to see the judgment?

Some time in mid 1973, the petitioner is stated to have been contacted by the senior officer of the respondents, who represented that a lone post of Head Constable (Mechanic) has been lying vacant at the Battalion Head Quarter under the respondents at Kumarsain, District Shimla since long. Due to the said vacancy, the department was facing problem in getting the vehicles repaired. He was asked to join the same and was offered higher pay and bright future prospects.

Acting on the said representation, the petitioner left his job and joined his new appointment under the respondents at Kumarsain on 11th July, 1973. After joining at Kumarsain, the petitioner was told by the officials that the lowest sanctioned post on mechanical side was that of Head Constable (Mechanic), for which minimum prescribed qualification was three years diploma in Automobile Engineering. The petitioner was assured that a case for relaxation of qualification would be recommended and untill it was done, the petitioner's pay would be drawn against non-existent post of Constable (Mechanic). His case was also recommended by respondent No.3. During his service, he has successfully completed various reputed courses for which he had been sent by the respondents. In April, 1993, the petitioner's grievance was also made known to the Group Centre, Dharampur. Respondent No.3 constituted a Board consisting of Shri J. P. Singh, Commandant, Shri B. R. Bhardwaj, 2nd in Command, Sub-Inspector Mechanic and Instructor, Industrial Training Institute, Solan to examine the suitability of the petitioner for promotion/appointment as Head Constable (Mechanic). The said Board is stated to have strongly recommended the case of the petitioner for appointment as Head Constable (Mechanic), keeping in view his sufficient

practical and theoretical knowledge about the repairs and maintenance of patrol as well as diesel vehicles. Based on the report of the Board, respondent No.3 recommended the name of the petitioner for appointment/promotion as Head Constable (Mechanic), which had since been lying vacant since long. It is further stated that the petitioner was further paid as Lance Naik Driver and then as Naik Driver, which however, did not make any financial difference. The petitioner is stated to have made another representations on 18th April, 1995 and 9th May, 2001, which were turned down in terms of letter dated 16th July, 2001.

In the reply filed by the respondents, the fact that the petitioner was appointed as MT Constable (Mechanic) on 11th June, 1973, is not disputed. It is further stated that since the petitioner did not fulfil the qualification prescribed for recruitment, he could not have been considered for appointment/promotion. It is admitted that the matter with regard to amendment of Rules was under consideration. The respondents have been repeatedly informing the petitioner with regard to the factum of his non consideration due to his ineligibility. It is further stated that the petitioner has been promoted to the rank of Lance Naik Driver and Naik Driver in his own turn.

Shri H. K. Paul, Advocate, appearing for the respondents has contended that the petitioner has taken up the job on the personal assurance of the respondents. In any event, there was only one post of Head Constable (Mechanic) in the mechanical cadre. The petitioner has been recruited as mechanic and not driver and has been performing the duties of mechanic. Since the eligibility criteria with regard to the post of Head Constable (Mechanic) was assurred to be relaxed, the petitioner

was working and drawing his salary against such post only. In its various representations, the petitioner has expressed his plight of stagnation in the service. The learned counsel has relied upon AIR 1988 SC 1033 ***Raghunath Prasad Singh*** vs. ***Secretary Home (Police) Department, Govt. of Bihar and Others***, AIR 1989 SC 1972 ***Council of Scientific & Industrial Research and another*** vs. ***K. G. S. Bhatt and another.*** AIR 1990 SC 311 ***Dr. Ms. O. Z. Hussain*** vs. ***Union of India and Others*** to contend that reasonable promotional opportunities should have been made available to the petitioner. This would generate efficiency in service and foster appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation would kill the desire to serve properly. Promotion is thus a normal incidence of service. The learned counsel has further relied upon 1990 Vol. IV SCC 205, ***B. N. Saxena*** vs. ***New Delhi Municipal Committee and others*** to contend that eligibility criteria of qualification can be dispensed with, if the person possesses sufficient experience. Gained over considerable length of time, which itself is a qualification.

The learned Assistant Solicitor General appearing for the respondents has sought to justify the stand taken by them in the affidavit. He has canvassed that it is not a case where there has been no promotion and that assurances, if any, have no binding effect in law.

There is only one post of Head Constable (Mechanic) at the place where the petitioner was appointed on 11th July, 1973. The petitioner is undisputedly carrying out the work of mechanic and attending to the vehicles of the respondents at Kumarsain, District Shimla. It is not

in dispute that the petitioner has been making various representations for relaxation of the qualification for making the petitioner eligible for appointment/promotion as Head Constable (Mechanic) and that the respondents have been actively considering and taking some steps in that regard. It is also an undisputed fact that eligibility criteria was not relaxed. However, had the petitioner been appointed as Head Constable (Mechanic) which was a sanctioned post and lying vacant from the date of petitioner's initial appointment, he would have got promotion to the next cadre post of Sub Inspector Mechanic. The fact that on the mechanical side there are only two sanctioned posts i.e. Head Constable (Mechanic) and Sub Inspector Mechanic, is not disputed.

At this stage, counsel for the petitioner contended that if the respondents were directed to consider afresh the entire issue of petitioner's appointment/promotion/ creation of promotional avenues in view of the various decisions of the Supreme Court referred to hereinabove, the petitioner would not press his petition. He requested that the present writ petition be treated as a representation on the part of the petitioner, which may be decided by the respondents authorities expeditiously .

This request of the petitioner is not objected to by the learned Assistant Solicitor General.

In this view of the matter, the present petition is directed to be treated as representation on behalf of the petitioner to the respondent authorities for consideration of the petitioner's claim. While considering the issue of creation of promotional avenues, relaxation of eligibility criteria for appointment/promotion of petitioner as Head Constable (Mechanic),

petitioner's length of service be also kept in mind. The respondents shall decide the matter within a period of twelve weeks from today. The authorities shall take a decision unmindful of any observation made in present order since I have not decided any of the issues raised by the parties on merit. It shall be open for the petitioner to exhaust his remedies in accordance with law. In terms of the aforesaid order, the present petition is accordingly disposed of.

(Sanjay Karol)
Judge.

March 21, 2007
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